Supreme Court, U.S.
FILED
DEC 6 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-515 (4)

In the Supreme Court of the United States

OCTOBER TERM, 1985

ANTONI GRONOWICZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

BEST AVAILABLE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-515

ANTONI GRONOWICZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

---

1. Petitioner authored a book entitled *God's Broker: The Life of John Paul II* (1984), a biography of Pope John Paul II which purports to be based, in part, on numerous private interviews with the Pope himself and other high officials of the Roman Catholic Church. After questions had surfaced regarding the occurrence of the interviews recounted in petitioner's book, a federal grand jury in the Eastern District of Pennsylvania began an investigation into the question whether petitioner had violated the federal mail and wire fraud statutes, 18 U.S.C. 1341 and 1343, by procuring substantial sums of money from the sale of publishing and movie rights through fraudulent representations that his book was based upon personal interviews with the Pope. On August 8, the grand jury issued a subpoena duces tecum to petitioner, commanding him to testify before the grand

jury and to produce various records (C.A. App. A5-A7).[1] Petitioner objected to the subpoena on several grounds, including the claim that he was privileged under the Free Speech Clause of the First Amendment from producing any of the subpoenaed items because the grand jury's investigation would involve consideration of the truth or falsity of matters stated in his book (C.A. App. A8-A9). After two separate hearings, the district court rejected petitioner's claims and held him in contempt for refusing to comply with the court's order (C.A. App. A55, A217-A227, A234, A254-A255, A257-A263). Petitioner appealed, and the en banc court of appeals, by a divided vote, upheld the contempt judgment, rejecting his claim that he was privileged under the First Amendment from producing any of the subpoenaed items (Pet. App. A1-A19).[2]

2. We have been informed by counsel for petitioner that petitioner died after the petition in this case was filed. We have also been informed by the United States Attorney's Office that the grand jury investigation of petitioner's activities has ceased and that no further investigation of this matter is contemplated. Accordingly, there is no longer a justiciable case or controversy between the parties. The petition for a writ of certiorari therefore should be denied.

---

[1]The grand jury's subpoena was subsequently narrowed by an ordered entered by the district court on October 16 on the government's motion (C.A. App. A69-A71).

[2]A panel of the court of appeals had previously reversed the district court's judgment, but the panel decision was vacated when the court of appeals granted the government's suggestion for rehearing en banc. The panel decision is not reprinted in the appendix to the petition. We have lodged a copy of the opinion with the Clerk.

Cf. *Mintzes* v. *Buchanon,* No. 84-501 (Apr. 15, 1985); *Dove* v. *United States,* 423 U.S. 325 (1976).[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

DECEMBER 1985

---

[3]It is the position of the United States, more fully explicated in our brief in opposition in *Velsicol Chemical Corp.* v. *United States,* No. 77-900 (a copy of which we are serving on petitioner's counsel), that the judgment of the court of appeals in a case that has become moot prior to action on a petition for writ of certiorari should not be vacated unless this Court would have granted review had the matter remained a live controversy. In *Velsicol,* certiorari was denied (435 U.S. 942 (1978)) despite the petitioner's request that the judgment of the court of appeals be vacated as moot. Under the standard that we proposed in *Velsicol,* the petition in this case should be denied. While the claim advanced by petitioner was a novel and imaginative one, its rejection by the court of appeals created no conflict among the circuits or other reason for review by this Court. Moreover, the Court's action in *Mintzes* v. *Buchanon, supra,* suggests that denial or dismissal of the petition here may be appropriate even if the issue it presents were deemed worthy of this Court's review.